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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 725

NICK TEDESCO,

Appellant,

vs.

BOARD OF SUPERVISORS OF ELECTIONS OF THE PARISH OF ORLEANS, ET AL.

APPEAL FROM THE COURT OF APPEAL FOR PARISH OF ORLEANS, STATE OF LOUISIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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BOARD OF SUPERVISORS OF ELECTIONS FOR THE PARISH OF ORLEANS, ET AL.

APPEAL FROM THE COURT OF APPEAL FOR PARISH OF ORLEANS, STATE OF LOUISIANA

STATEMENT OF APPELLEES AGAINST JURISDICTION WITH MOTION TO DISMISS OR AFFIRM

Appellees through their undersigned counsel move the Honorable the Supreme Court of the United States for either dismissal of this appeal, or for affirmance of the judgment appealed from, on the following grounds:

I

Appellant admits in his statement as to jurisdiction that the officers of the municipality provided for in the statute

of which he complains will be elected at a general election to be held April 4, 1950, or before any decision of this Court upon the issues could be made effectual.

In such circumstance, even if the appeal presented a case within the jurisdiction of this Court, it should be dismissed on the authority of:

Mills v. *Green*, 159 U. S. 651, 16 S. Ct. 132;
Jones v. *Montague*, 194 U. S. 147, 24 S. Ct. 611;
Selden v. *Montague*, 194 U. S. 153, 24 S. Ct. 613;
Richardson v. *McChesney*, 218 U. S. 487, 31 S. Ct. 43;
Love v. *Griffith*, 266 U. S. 32, 45 S. Ct. 12;
Ex parte James, 287 U. S. 572, 53 S. Ct. 114.

II

Basically, the appellant complains that the Fourteenth Amendment denies to the Legislature of Louisiana the right to determine the manner in which the officers of a municipal corporation which it creates are to be chosen.

He asserts a right, protected by the Federal Constitution, to vote for every elected officer who is to perform any duty in the administration of the municipal government.

The election of these officers by districts, he contends, deprives him "of the immunity from being governed by officials who do not represent him and who are not responsible to him as a voter."

He also would predicate a denial of equal protection of the law on the circumstance that there is a disparity of electors in the electoral districts.

In effect this is an appeal to this Court to reconstruct the electoral process of a municipality to provide that each *voter* may have an equal vote in choosing the councilmen of the City. This Court would not undertake such task with respect to the congressional districts of Illinois (*Colegrove*

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v. *Green*, 328 U. S. 549, 66 S. Ct. 1198). It cannot do so with respect to the State's own creations.

The power of a State to determine whether local officers shall be appointed or elected is not affected by the Fourteenth Amendment. *Soliah* v. *Heskin*, 222 U. S. 522, 32 S. Ct. 103.

The Legislature of a State possesses the power to divide counties and towns at their pleasure, *Board of Laramie* v. *Board of Albany*, 92 U. S. 307, 23 L. Ed. 552. It is not necessary that municipal officers should be elected by its people or be appointed with their assent, *Mobile County* v. *Kimball*, 102 U. S. 691, 26 L. Ed. 238. Except as limited by its own Constitution, the State is supreme with respect to its municipal corporations, it may at pleasure, with or without the assent of the citizens, expand or contract their territorial areas, take their property, repeal their charters and destroy them; unrestrained by any provision of the Constitution of the United States. *Hunter* v. *Pittsburgh*, 207 U. S. 161, 28 S. Ct. 40. It may abolish all officers within its reach, *Higginbotham* v. *City of Baton Rouge*, 306 U. S. 535, 59 S. Ct. 705.

III

The court of last resort of the State of Louisiana has adjudged that the statute herein assailed was within the constitutional competence of the Legislature. *City of New Orleans* v. *Board*, 43 So. 2d 237.

Appellant makes no complaint of discrimination forbidden by the Fifteenth or Nineteenth Amendments. He depends upon an assertion that the right to vote for all elective officials of a municipality is a privilege or immunity of national citizenship protected by the Fourteenth Amendment.

Similar pretensions, heretofore urged, have been consistently rejected as the following cases will amply demonstrate:

Minor v. *Happersett*, 21 Wall. 162, 22 L. Ed. 627;
U. S. v. *Reese*, 92 U. S. 563;
U. S. v. *Cruikshank*, 92 U. S. 588;
Mason v. *Missouri*, 179 U. S. 328, 21 S. Ct. 125;
Breedlove v. *Suttles*, 302 U. S. 277, 58 S. Ct. 205.

IV

That no substantial Federal question can be made to rest on the exercise by the State of its power to provide for elections by districts instead of at large, amply appears from the decision in *McPherson* v. *Blocker*, 146 U. S. 1, 13, S. Ct. 3, holding that nothing in the Fourteenth or Fifteenth Amendments interferred with Missouri's power to provide for the election of presidential electors by congressional districts instead of by the people of the State at large. A fortiori the election of councilmen by districts instead of at large cannot offend these amendments.

V

Appellant's complaint is not supported by the four cases upon which he relies.

Nixon v. *Herndon* (273 U. S. 536, 47 S. Ct. 446) and *Smith* v. *Allwright* (331 U. S. 649, 64 S. Ct. 757) both involved discriminations based solely on the elector's color. No such complaint is made in the instant case.

The Classic case (313 U. S. 299, 61 S. Ct. 1031) was a criminal prosecution for violation of a Federal statute in the conduct of a primary election to select a candidate for the Congress of the United States. The statute herein assailed is limited to the election of the officers of the City of New Orleans.

In *Colgrove* v. *Green* (328 U. S. 549, 66 S. Ct. 1198) a complaint against an Illinois statute apportioning the State into congressional districts with lack of compactness of territory and of approximate equality of population was dismissed for want of equity. No congressional apportionment is herein involved.

VI

The appellant's averments as to the existence of questions under the Constitution of the United States are without merit, and the record discloses no real and substantial Federal question not already settled adversely to appellant's contentions.

VII

The appeal should be dismissed, or, the judgment of the Court of Appeal for the Parish of Orleans, State of Louisiana, should be affirmed.

Respectfully,

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